REMARKS

In response to the Office Action mailed May 8, 2003, Applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks. The application is believed to be in condition for allowance.

Claims 1-51 are pending in this application. Claim 28 was objected to as being dependent upon a rejected base claim, but was indicated to be in allowable condition if rewritten in independent form to include all of the limitations of its base claim. Claim 28 has been so rewritten. Accordingly, allowance of claim 28 is respectfully requested.

Claims 8-9, 14-17, 21, 22, 24, 38-40, 43, 47, 49 and 51 were also objected to as being dependent upon a rejected base claim, but were indicated to be in allowable condition if rewritten in independent form to include all of the limitations of their respective base claim and any intervening claims. Claims 1-3, 11, 25, 26, 27, 29, 30, 44-46, 48 and 50 stand rejected under 35 U.S.C. §103(a) as being obvious over Tavallaei (5,834,856) in view of Bell (5,917,997). Claims 4, 5, 7, 10, 12, 18-20, 23, 28, 31-37, 41 and 42 stand rejected under 35 U.S.C. §103(a) as being obvious over the combination of Tavallaei and Bell in further view of Vert (6,360,331). Applicants respectfully traverse these rejections.

Claim Rejections Under 35 U.S.C. §112, First Paragraph

The Office Action rejected claims 6 and 13 under 35 U.S.C. §112, first paragraph, as purportedly lacking enablement in the specification. Specifically, the Office Action asserted that both of these claims describe an act of "replicating" in which no copying is performed, and the Examiner did not understand "how a replicating function could be performed without the act of copying." Applicants respectfully disagree with this rejection.

However, to further the prosecution of this application, Applicants have amended claims 6 and 13 to overcome this rejection. Claims 6 and 13 now recite that the act of replicating the data inlcudes an act of, "making the data available to the second host computer without the first host computer copying the data from the at least one first storage device and without the second host computer copying the data to the at least one second storage device."

An example of how "making the data available to the second host computer without the first host computer copying the data from the at least one first storage device and without the second host computer copying the data to the at least one second storage device," may be performed is described at page 15, lines 21-29. Applicants explain that the assignment of storage devices used by the primary host computer may be modified so that those storage devices are then accessible to the secondary host computer. Such a reassignment of storage devices involves no actual copying of data, and is described in Applicants' specification in a manner that is clearly enabling to those of ordinary skill in the art. Further, as described therein, this reassignment may be performed by the controller 160, which may be a device that is distinct from the first and second host computers, although the present invention is not so limited. Accordingly, withdrawal of the rejection of claims 6 and 13 under 35 U.S.C. §112, first paragraph is respectfully requested.

Rejections Under 35 U.S.C. §103

As noted above, Claims 1-3, 11, 25, 26, 27, 29, 30, 44-46, 48 and 50 stand rejected under 35 U.S.C. §103(a) as being obvious over Tavallaei (5,834,856) in view of Bell (5,917,997). This rejection is respectfully traversed.

Discussion of the References

Tavallaei (5,834,856)

Tavallaei is directed to the hot-swapping of components within a single host computer, and discloses nothing about configuring one host computer to host at least a portion of an electronic commerce site of another host computer. Tavallaei discloses a computer system having primary and redundant devices, and more particularly to a device controller that is adapted to control the redundant devices to be normally off while the primary device is operating, and to become operational at predetermined intervals and for predetermined amounts of time in order to determine whether the redundant device could be operational if the primary

device failed (Col. 3, lines 49-61). As described in Tavallaei, the types of devices that may be controlled by the computer system of Tavallaei include fan assemblies, power supplies, power modules, I/O boards, microprocessor boards, disk controllers, bus controllers, and microprocessors (Col. 3, lines 61-66).

In one embodiment disclosed by Tavallaei, illustrated in Fig. 3, a computer system 300 is provided with the ability to determine whether one of a plurality of voltage regulators 304 is operational and to configure a secondary voltage regulator 306 to be used instead (Col. 6, line 13 – col. 7, line 5).

Bell (5,917,997)

Bell is directed to host identity takeover using virtual internet protocol addressing. Bell discloses a system in which a host is assigned a virtual internet protocol address (VIPA) (Col. 2, lines 31-32). If an operator learns that the host has failed or has been taken down, the operator may manually, but dynamically, configure the VIPA address of the first host to reside on the second host (Col. 2, lines 47-53). The operator performs this dynamic configuration by executing an OBEYFILE that includes certain parameters regarding the VIPA address that is to be reassigned (Col. 2, lines 53-57).

The Combination of References is Improper

The Office Action asserts that it would have been obvious to one of skill in the art at the time of the invention to combine the system of Bell with the system of Tavallaei because "by incorporating the data reliability and reconfiguration means of Bell and the hosting and detecting means of Tavallaei, a more reliable business host system can be achieved."

The Office Action fails to establish a *prima facie* case of obviousness, as the Office Action provides no detail on what type of system the asserted combination of Tavallaei and Bell would purportedly result in, or how one would have purportedly been motivated to combine the references to achieve such a system. This must be done to avoid the potential for the improper use of hindsight in simply picking and choosing pieces of the references.

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In the absence of such an explanation in the Office Action, Applicants are forced to make some assumptions about the basis of this rejection. Tavallaei appears to be the primary reference relied upon in the rejection, as the Office Action relies upon Tavallaei for purportedly showing the majority of the limitations in the claims. Thus, one possibility is that the Office Action asserts that one skilled in the art would have been motivated by Bell to modify Tavallaei to provide the ability to reconfigure a replacement system to replace a failed system. However, as discussed further below, if one skilled in the art were so motivated, they would have followed the teachings of Bell to perform such reconfiguration manually (i.e., in response to a command from an operator). Thus, one skilled in the art would not have been motivated to make the combination suggested in the Office Action.

Alternatively, the Office Action may be suggesting that one skilled in the art would have been motivated to modify Bell such that the identity of a non-functioning host could automatically (rather than manually, as taught by Bell) be assigned to another functioning host without intervention from a human operator, based on the teaching in Tavellaei of automatically replacing non-functioning components in a computer. If so, Applicants respectfully disagree. One of ordinary skill in the art would not have been motivated to modify the system of Bell in this manner. Tavallaei is directed to replacing non-functioning physical components in a computer system with redundant components. There is no teaching or suggestion in Tavallaei that the concepts of automatically replacing failed physical components in a computer could be applied to automatically reassigning the network identity of a failed host computer. Indeed, the concepts of automatically replacing non-functioning physical components are entirely unrelated and inapplicable to re-assigning network identities of hosts.

As should be clear from the foregoing, the teachings of Bell and Tavallaei are entirely unrelated. Combining these two references would be like combining a first reference that discloses an automobile engine with a second reference that discloses automobile brakes. The resulting combination would be an automobile having the engine disclosed by the first reference and the brakes disclosed by the second reference. Likewise, if one of ordinary skill in the art were to follow the teachings of Tavallaei and Bell, the result would be a system in which the network identity of a host may be reassigned to another host in response to an operator executing

an OBEYFILE (as taught by Bell), wherein each of the hosts has hot-swappable physical components (as taught by Tavallaei). Such a system is very different from Applicants' claimed invention.

In view of the foregoing, it is respectfully asserted that the combination of Tavallaei and Bell asserted in the Office Action is improper. Accordingly, the rejection of claims 1-5, 7, 10-12, 18-20, 23 25-29, 30-37, 41, 42, and 44-46 under 35 U.S.C. §103(a) over the combination of Tavallaei and Bell (alone or in view of Vert) is improper and should be withdrawn.

The Claims Patentably Distinguish Over the Combination

As mentioned above, if one of ordinary skill in the art were to follow the teachings of Tavallaei and Bell, the result would be a system in which the network identity of a host may be reassigned to another host in response to an operator executing an OBEYFILE (as taught by Bell), wherein each of the hosts has hot-swappable physical components (as taught by Tavallaei). Such a system is very different from Applicants' claimed invention.

Claim 1

Claim 1 is directed to a method of performing electronic commerce. The method includes acts of hosting an electronic commerce site on a first host computer, detecting a change in operation of the electronic commerce site; and automatically configuring a second host computer to host at least a portion of the electronic commerce site on the second host computer in response to the act of detecting.

Tavallaei and Bell, taken individually or in combination, fail to disclose, teach, or suggest Applicants' invention as recited in claim 1. Initially, Applicants note that neither Tavallaei nor Bell discloses or suggests "hosting an electronic commerce site on a first host computer." The Office Action asserts that Tavallei discloses hosting an electronic commerce site at column 4, lines 23-32. Applicants respectfully disagree.

The cited paragraph of Tavallei discloses a number of different environments in which computers may be used, including assembly lines, banking transactions, document production, etc. This paragraph of Tavallei does not disclose or suggest hosting an electronic commerce site.

Likewise, Bell fails to disclose hosting an electronic commerce site, as Bell is silent on the environment in which the disclosed host identity takeover method may be used.

Further, neither Bell or Tavallaei, taken individually or in combination, discloses or suggests "automatically configuring a second host computer to host at least a portion of the electronic commerce site on the second host computer in response to the act of detecting." Tavallaei discloses detecting a non-functioning component on a failed computer and replacing the non-functioning component with a functioning component on **the same computer**. Indeed, in Tavallaei, no other host computers, other than the one in which an individual component may fail, are even addressed. While Bell discloses reassigning the identity of a first host on a network to a second host on the network in case of failure of the first host, the failure of the first host must be detected by a human operator and the human operator must initiate the reassignment of identity by executing an OBEYFILE. Thus, the reassignment of the identity of the first host to the identity of the second host is not performed automatically.

Therefore, even if one were to combine Bell and Tavellaei, the resulting system would be one in which physical components in one host computer (e.g., a voltage regulator) could, upon failure, automatically be replaced with a redundant component, but wherein the assignment of the identity of that host to a different host, upon failure of the host itself, would require intervention from a human operator (as taught by Bell) and **would not be performed automatically.**

Because Tavallaei and Bell, taken individually or in combination, fail to disclose all of the limitations recited in claim 1, claim 1 patentably distinguishes over Tavallaei and Bell. Accordingly, it is respectfully requested that the rejection of claim 1 under 35 U.S.C. §103(a) be withdrawn.

Claims 2-7, 10-13, 18-20, 23, 25, and 26 depend from claim 1 and patentably distinguish over Tavallaei and Bell for at least reasons discussed above in connection with claim 1. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

Claim 27

Claim 27 is directed to a computer system. The computer system includes a first host computer that hosts an electronic commerce site, a second host computer, and a controller that is operatively coupled to the first host computer and the second host computer. The controller automatically configures the second host computer to host at least a portion of the electronic commerce site on the second host computer in response to a change in operation of the electronic commerce site.

As should be clear from the discussion above in connection with claim 1, neither Bell nor Tavallaei discloses or suggests "a first host computer that hosts an electronic commerce site," and neither Bell or Tavallaei, taken individually or in combination, discloses or suggests a controller that "automatically configures a second host computer to host at least a portion of the electronic commerce site on the second host computer in response to a change of operating of the electronic commerce site."

Thus, claim 27 patentably distinguishes over Tavallaei and Bell. Accordingly, it is respectfully requested that the rejection of claim 27 under 35 U.S.C. §103(a) be withdrawn.

Claims 29-37, 41, 42, and 44 depend from claim 27 and patentably distinguish over Tavallaei and Bell for at least reasons discussed above in connection with claim 27. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

Claim 45

Claim 45 is directed to a storage system for use with a first host computer and a second host computer. The storage system includes at least one first storage device to store data of the first host computer corresponding to an electronic commerce site hosted by the first host computer, and a controller that is coupled to the at least one first storage device. The controller, when operatively coupled to the first host computer and the second host computer, automatically configures the second host computer to use at least a portion of the data of the first host computer that corresponds to the electronic commerce site to host a portion of the electronic commerce site

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on the second host computer in response to a change in operation of the electronic commerce site.

As should be clear from the discussion above in connection with claim 1, claim 45 patentably distinguishes over Tavallaei and Bell, taken individually or in combination, because neither reference discloses or suggests "an electronic commerce site hosted by the first host computer," nor a controller that , when operatively coupled to the first host computer and the second host computer, "automatically configures the second host computer to use at least a portion of the data of the first host computer that corresponds to the electronic commerce site to host a portion of the electronic commerce site on the second host computer in response to a change in operation of the electronic commerce site."

Further, neither Tavallaei and Bell, taken individually or in combination, discloses that such automatic configuration is performed by a <u>controller of a storage system</u>. The replacement of non-functional components in a computer, as disclosed by Tavallaei, is performed by the computer, not by a storage system. Likewise, the re-assignment of the identity of host, as disclosed by Bell, is performed by an operator. Neither reference discloses a storage system that configures a host in any manner, let alone in the manner recited in claim 45.

In view of the foregoing, claim 45 patentably distinguishes over Tavallaei and Bell. Accordingly, it is respectfully requested that the rejection of claim 45 under 35 U.S.C. §103(a) be withdrawn.

Claims 46, 48, and 50 depend from claim 45 and patentably distinguish over Tavallaei and Bell for at least reasons discussed above in connection with claim 45. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to deposit account No. 23/2825.

Respectfully submitted,

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Attorney's Docket No.: E00295.70108
Date: August 8, 2003

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